REMARKS

Claims 80, 100, 232, and 241-255 are pending. Claim 232 has been amended. No claims have been added or canceled. As such, Claims 80, 100, 232, and 241-255 are pending, of which claims 232 and 241-255 are under consideration. Support for the present amendment may be founded in the specification and original claims, e.g., by way of the positive recitation of alternative elements of the original claimed embodiments (see MPEP § 2173.05(i)). No new matter enters by way of the present amendment. Further, the amendments presented do not raise new issues requiring further search and consideration, and the amendments remove issues for appeal. As such, entry of the amendment and consideration of the claims as amended is respectfully requested.

I. Claim Rejections under 35 U.S.C. § 102

Claims 232 and 241-255 remain rejected under 35 U.S.C. § 102(a) or (e) as being allegedly anticipated by Ryono *et al.*, US 2005/004184 A1(see CAS: 141:395288)(hereinafter "Ryono"). This rejection is respectfully traversed for at least the reasons which follow.

In maintaining the rejection, the Examiner notes that R4 of formula (VIII) may still represent aryl. *Office Action* mailed April 15, 2010 at page 2. While not agreeing with the rejection, Claim 232 has been amended so that R^4 is limited in the same manner as R^3. As such, whatever else Ryono may teach, the compounds disclosed by Ryono clearly do not overlap with the compounds of Claims 232, and those dependent therefrom, in at least substituents R^3 and R^4. Further, the compounds disclosed by Ryono clearly do not overlap with the compounds of Claim 251, and those dependent therefrom, in at least -T-X. As such, whatever else Ryono may disclose, Ryono does not teach or suggest any structure, formulae or embodied compounds which overlap with the present claims. For at least these reasons, withdrawal of this rejection is therefore respectfully requested.

II. Claim Rejections under 35 U.S.C. § 103

Claims 232 and 241-255 remain rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Li. This rejection is respectfully traversed for at least the reasons which follow.

In support of this rejection, the Examiner states that R1 and R2 of formula VIII may still independently represent alkyl, and thus the claims are rendered obvious by the teachings of Li. Applicants disagree.

Initially, it is noted that Claim 232 includes an express proviso that excludes from its scope any potential overlap with the compounds of Li. As such, whether the general definition of R^1 and R^2 in Claim 232 includes an alkyl does not implicate an overlap with the teaching of Li, as the compounds of Li are excluded by way of proviso d). Moreover, to expedite prosecution, the scope of provisio d) has been generalized to be more encompassing. Further, the compounds of Li do not overlap with the compounds of Claim 251 in at least G, and -T-X.

In any event, the present claims specifically exclude the compounds disclosed in Li. As such, there is no actual overlap between the teachings of Li and the present claims. At most, Li provides a **general approach** to selecting **theoretical** compounds from a broad array of potential compounds -- without any motivation or guidance so as to lead those of skill in the art to conclude that any particular selection would be more predicable over another for the purpose of the present claims. Without any specific guidance that a particular phosphinic acid selection would be a particularly suitable for use with any other particularly suitable selection within the scope of the present claims, Li simply does not render the present claims obvious. The general allegations in the Office Action of compounds that would "possess similar activities" would not lead those of skill in the art to select the particular combinations of substituents and modify the teachings accordingly so as to arrive at the present claims based on the broad possibilities in Li. Such a general approach does not dictate success with predictability.

For at least these reasons, it is respectfully submitted that the claims are patentable over the cited art, and withdrawal of this rejection is respectfully requested.

III. Obviousness Double Patenting Rejection

Claims 232 and 241-255 stand rejected under the judicially created doctrine of obvious-type double patenting as allegedly being unpatentable over claims 1 and 13 of Erion et al., US Pat 7,514,419, and claims 78, 113, and 116 of co-pending Erion et al., U.S. Application Serial No. 11/816,774.

While not agreeing with the rejections, in order to facilitate prosecution, Applicants are submitting herewith a Terminal Disclaimer in the present case with regard to US Pat 7,514,419. Withdrawal of this rejection is therefore respectfully requested.

Further, Applicants are willing to submit a Terminal Disclaimer in the present case and/or co-pending application U.S. Application Serial No. 11/816,774, as appropriate, upon an

indication of allowable subject matter. As such, it is requested that the obviousness type double patenting rejections be held in abeyance until such time as the claims in the present application and/or co-pending application U.S. Application Serial No. 11/816,774 are in condition for allowance.

It is noted that the filing of a terminal disclaimer to obviate a rejection based on non-statutory double patenting is not an admission of the propriety of the rejection. See, *e.g.*, *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991) ("filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.")

CONCLUSION

In view of the above, each of the presently pending claims is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding objection and rejections of the claims, and to pass this application to issue. The Examiner is encouraged to contact the undersigned at (303) 863-2303 should any additional information be necessary for allowance.

Respectfully submitted,

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